(36)

HIGH COURT OF CHHATTISGARH AT BILASPUR

Criminal Appeal No.3288 of 1999

APPELLANT: Budhwaria Bai

- Versus -

RESPONDENT: State of Madhya Pradesh
(Now Chhattisgarh)

AND

Criminal Appeal No.704 of 2000

APPELLANT: Shyam Prasad

- Versus -

RESPONDENT: State of Madhya Pradesh
(Now Chhattisgarh),

JUDGMENT FOR CONSIDERATION

Sd/-
L.C.BHADOO
Judge
JUDGE
12-4-2007

HON'BLE MR. JUSTICE DHIRENDRA MISHRA

9 agree

Sd/-
Dhirendra Mishra
Judge
-4-2007

POST FOR PRONOUNCEMENT JUDGMENT ON 16th APRIL, 2007

Sd/-
J
13th-4-2007

(37)

HIGH COURT OF CHHATTISGARH AT BILASPUR

Criminal Appeal No.3288 of 1999

APPELLANT/:
(Accused) (In jail)

Budhwaria Bai,
Widow of Nankun Gond,
Aged about 50 years,
R/o Nawagaon,
Police Station: Kota,
District: Bilaspur (M.P.) (now C.G.)

- Versus -

RESPONDENT:

State of Madhya Pradesh
(now Chhattisgarh),
Through the Superintendent,
Central Jail, Bilaspur (M.P.)
(now C.G.)

AND

Criminal Appeal No.704 of 2000

APPELLANT/:
(Accused) (In jail)

Shyam Prasad,
S/o Janak Prasad Mishra,
Aged about 28 years,
R/o Nawagaon,
Police Station: Kota,
District: Bilaspur (M.P.) (now C.G.)

- Versus -

RESPONDENT:

State of Madhya Pradesh
(now Chhattisgarh),
Through the Superintendent,
Central Jail, Bilaspur (M.P.)
(now C.G.)

Present: -

Mr. Abhay Tiwari, Advocate: For the appellants.

Mr. U.N.S. Deo, Addl. Public Prosecutor: For the State/respondent.

DIVISION BENCH: -

HON'BLE MR. L.C. BHADOO AND
HON'BLE MR. DHIRENDRA MISHRA, JJ.

JUDGMENT

(Delivered on 16th April, 2007)

The following judgment of the Court was delivered by *L.C. Bhadoo, J*: -

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1. Criminal Appeal No.3288/1999 filed by Budhwaria Bai and Criminal Appeal No.704/2000 filed by Shyam Prasad are arising out of the same judgment passed by the Sessions Judge, Bilaspur in Sessions Trial No.275/98, therefore, they are being disposed of by this common judgment.

2. By these appeals, the accused/appellants have questioned legality and correctness of the judgment of conviction and order of sentence dated 16th September, 1999 passed by the Sessions Judge, Bilaspur, in Sessions Trial No.275/98, whereby learned Sessions Judge after holding the accused/ appellants guilty for committing the murder of Santram & Itwari - sons of accused Budhwaria Bai, by administering them the poisonous substance i.e. root of yellow oleander, convicted both of them under Section 302 read with Section 34 of the I.P.C. and sentenced each of them to undergo imprisonment for life and pay a fine of Rs.5,000/-, in default of payment of fine to further undergo R.I. for two years.

3. Case of the prosecution, in brief, is that Budhwaria Bai is the mother of deceased Santram & Itwari. She has another son namely, Sukhram. She gave birth to these three sons out of her wedlock with Nankun Gond. As Nankun Gond died, Budhwaria Bai, was living separately, whereas the two deceased sons as well as another son Sukhram were living separately. Case of the prosecution is that Budhwaria Bai fell in love with co-accused Shyam Prasad - neighbour of Budhwaria Bai, therefore, Shyam Prasad used to visit the house of Budhwaria Bai frequently, which was not liked by the deceased sons of Budhwaria Bai. They were objecting the coming of Shyam Prasad to the residence of their mother Budhwaria Bai. In this connection, even the meeting of Panchayat of Village: Nawagaon was convened for that notice Ex.P-14 was issued to Santram, Itwari & Sukhram. Sarpanch Mohanlal Shrivas (PW-11) admonished Santram & Itwari and also advised Shyam Prasad not to visit the house of Budhwaria Bai. The said objection of Santram & Itwari was not liked by the accused/appellants, therefore, they decided to eliminate Santram & Itwari and for that purpose, they formed a common intention and in furtherance of that common intention, ultimately, on 1-3-1998, the accused persons procured the root of yellow oleander from one Parmanand (PW-4), thereafter, accused Shyam Prasad crushed the root of yellow oleander on a stone and gave it to Budhwaria Bai who mixed it in the food cooked by her. Santram & Itwari consumed the same, they started vomiting and their condition became precarious. They ultimately died on account of consumption of the poisonous substance i.e. root of yellow oleander. Budhwaria Bai with the help of villagers, took Santram & Itwari to

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Police Station: Kota and reported the matter. The said information was entered in Roznamcha at serial No.18 and in turn, the Police Station sent Santram & Itwari along with Constable Gangaram for medical examination to Community Health Centre, Kota where Dr. Jagat Singh Dhakar (PW-7) after examination on 1-3-1998 at 3.45 p.m. reported that Santram was brought dead and Itwari was in unconscious condition, there was slow pulse beat, pupils were diluted and condition was precarious, therefore, after preparing the report Ex.P-4'C' he advised that Itwari be admitted in District Hospital, Bilaspur, but after some time, Itwari also died on account of consumption of the poisonous substance. Further case of the prosecution is that Budhwaria Bai made extra judicial confession before Aaju Singh (PW-8) & Janu Singh (PW-10). Shyam Prasad also made extra judicial confession before Aaju Singh (PW-8). Budhwaria Bai cleaned the first vomiting substance of Santram & Itwari from the place of occurrence.

4. After receiving the report, the Investigating Officer left for the scene of occurrence and seized the root of yellow oleander from Parmanand under Ex.P-10'A'. He gave application Ex.P-3 to the doctor of Community Health Centre, Kota regarding examination of Santram and the doctor gave report Ex.P-3'A' regarding the death of Santram. Similarly in respect of Itwari, the Police Officer gave application Ex.P-4 regarding the condition of Itwari on which the doctor gave his report Ex.P-4'C'. After giving notice Exs.P-5 & P-6 to the Panchas, the Investigating Officer prepared inquest Ex.P-7 on the body of Santram and Ex.P-8 on the body of Itwari. While in police custody, Budhwaria Bai gave memorandum Ex.P-9 regarding the money she received from Shyam Prasad on account of her illicit relations with him and in pursuance of that Rs.72/- were seized under Ex.P-10 at the instance of Budhwaria Bai. Accused Shyam Prasad gave information Ex.P-11 regarding the place where he had kept the stone with which the root of yellow oleander was crushed and in pursuance of that the stone was seized under Ex.P-12. Notice Ex.P-14 given to Sukhram, deceased Santram & Itwari by the Sarpanch for their appearance before the Panchayat in connection with harassment of their mother by them, was seized by the Investigating Officer under Ex.P-13. Dr. Jagat Singh gave letter Ex.P-15 to the Station House Officer, Police Station: Kota regarding the death of Itwari. Merg intimation Exs.P-16 & P-17 were given to the Station House officer, Police Station: Kota. Vomiting substance of Santram & Itwari were collected from the place of occurrence under Exs.P-18 & Ex.P-19, respectively. The left out vegetables mixed with the root of yellow oleander along

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with the utensil were seized from the house of accused Budhwaria Bai under Ex.P-20. Post-mortem on the body of Santram was conducted by Dr. A.K. Jha (PW-15), he submitted report Ex.P-21'A' and opined that the death was on account of asphyxia, but no definite opinion can be given regarding the cause of death. Post-mortem on the body of Itwari was conducted by Dr. Satish Kumar Shrivastava (PW-14), he gave report Ex.P-33 and opined that the death was on account of asphyxia, but no definite opinion can be given regarding the cause of death. Seized vomiting substance, vegetables and other articles were sent to Forensic Science Laboratory, Sagar, from where reports Exs.P-27 & P-28 were received in which it was opined that vomiting substance and left out vegetables were containing the yellow oleander substance. Site plan Ex.P-29 of the place of occurrence was prepared by the Investigating Officer.

5. After completion of investigation, charge sheet was filed in the Court of Chief Judicial Magistrate, Bilaspur, who in turn committed the case to the Sessions Judge, Bilaspur. The prosecution examined 15 witnesses at the trial. Statements of the accused persons were recorded under Section 313 of the Cr.P.C. in which they denied the material appearing against them and stated that they are innocent.

6. Learned Sessions Judge after hearing counsel for respective parties, convicted and sentenced the accused/appellants as aforementioned.

7. We have heard Mr. Abhay Tiwari, learned counsel for the appellants and Mr. U.N.S. Deo, learned Additional Public Prosecutor on behalf of the State/ respondent, perused the judgment and record of the trial Court.

8. In this case, there is no direct evidence. Whole case rests on the circumstantial evidence. In order to connect the accused persons with the murder of Santram & Itwari, the prosecution has tried to establish the following circumstances against the accused persons: -

   (1) Motive: The accused persons namely, Budhwaria Bai & Shyam Prasad were having illicit relations which was not liked by deceased Santram & Itwari - sons of accused Budhwaria Bai;

   (2) The accused persons, in order to remove Santram & Itwari from their way, administered the poisonous substance i.e. the root of yellow oleander;

   (3) Accused Budhwaria Bai made extra judicial confession before Aaju Singh (PW-8) & Janu Singh (PW-10) and accused Shyam Prasad before Aaju Singh (PW-8).

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First circumstance

9. Mr. Abhay Tiwari, learned counsel for the appellants, argued that the prosecution has not been able to establish motive of the accused persons to commit the murder of Santram & Itwari.

10. On the other hand, Mr. Deo, learned Additional Public Prosecutor, supported the judgment of the trial Court.

11. In order to establish motive, the prosecution has examined the following witnesses: -

- Rajkumari (PW-2) - wife of deceased Itwari: -

  This witness has stated in her evidence that the deceased persons and their elder brother were residing together, whereas, accused Budhwaria Bai was residing separately, as her husband had already expired before her (PW-2) marriage. Relations of her mother-in-law Budhwaria Bai with her husband Itwari & brother-in-law Santram, were not cordial, they used to quarrel.

- Ramcharan (PW-3): -

  This witness has not supported the prosecution case fully, but he has stated in his evidence that accused Shyam Prasad used to visit the house of accused Budhwaria Bai.

- Parmanand (PW-4): -

  This witness has also stated in his evidence that accused persons Shyam Prasad & Budhwaria Bai came to him and said that the children are harassing them, and demanded herb to keep the children under control. He has further stated that he asked Budhwaria Bai to mix the same in the food of her sons. They will be under control.

- Anita Bai (PW-5) - daughter-in-law of Budhwaria Bai & wife of Sukhram: -

  This witness has stated in her evidence that accused Shyam Prasad used to visit the house of accused Budhwaria Bai frequently and on account of that Itwari & Santram advised Shyam Prasad not to visit the house of their mother. In cross-examination, she has stated that relations of Santram & Itwari with Budhwaria Bai were not cordial.

- Sukhram (PW-6) - son of Budhwaria Bai: -

  This witness has stated in his evidence that accused Shyam Prasad used to keep paddy in their house, but later on he refused Shyam Prasad to keep his paddy

in their house. In cross-examination, he has stated that his relations with Shyam Prasad were not cordial. Santram (since deceased) disclosed him that there was fire in the threshing field of Shyam Prasad, for that Shyam Prasad lodged a report against Itwari.

- Mohanlal Shrivas (PW-11) – Sarpanch of Village: Nawagaon: -

  This witness has stated in his evidence that in the year 1998, Budhwaria Bai was Panch of the Gram Panchayat of his village, she complained against her sons namely, Sukhram, Itwari & Santram that they are objecting the visit of Shyam Prasad to her house, she further disclosed that they are doubting her relationship with Shyam Prasad as illicit and on account of that her relations with Santram & Itwari have become sore. Budhwaria Bai made the complaint in writing, therefore, he called her sons by sending a notice and admonished Santram, Itwari & Sukhram on which Sukhram asked that he is residing at Bilaspur, his mother Budhwaria Bai can come and reside with him at Bilaspur, that will solve the problem. Sukhram persuaded his mother Budhwaria Bai, but she did not shift to Bilaspur to reside with him.

- Chandra Prakash (PW-12): -

  This witness has corroborated the above fact and stated that Sukhram convened a Panchayat in Durga temple in which the accused persons were present, 10-15 persons were there and in which Sukhram disclosed that Shyam Prasad is visiting their house which is not liked by them, that is why he want to take Budhwaria Bai to Bilaspur. But Budhwaria Bai refused to shift to Bilaspur.

12. Ex.P-14 is the notice, which was sent to the deceased persons & Sukhram by the Sarpanch to appear before him, as their mother has complained that they are harassing her and beating her. The said notice was seized by the Investigating Officer under seizure memo Ex.P-13.

13. Therefore, evidence of the above witnesses as also the notice Ex.P-14 establishes that the relations of deceased Santram & Itwari as also Sukhram were not cordial with accused/appellants Budhwaria Bai & Shyam Prasad, as they were doubting relations between Shyam Prasad & Budhwaria Bai as illicit. They were objecting the visit of Shyam Prasad to the house of their mother Budhwaria Bai. There is nothing in cross-examination of these witnesses to discredit their evidence. Therefore, on account of

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continuous objection by the deceased persons, the accused persons had motive to eliminate Santram & Itwari in order to remove them from their way.

Second circumstance

14. As far as this circumstance is concerned, learned counsel for the appellants argued that the prosecution has not been able to establish by adducing cogent evidence that the root of yellow oleander was administered to the deceased persons namely, Santram & Itwari by the accused persons. He further argued that the root of yellow oleander is not a poisonous substance and even administration of the root of yellow oleander cannot cause the death of human being. He also submitted that there is no legal evidence on record to establish that the substance in question was administered with intention to cause death of Santram & Itwari.

15. On the other hand, learned Additional Public Prosecutor supported the judgment of the trial Court.

16. The Apex Court in the matter of **Sharad Birdhichand Sarda** vs. **State of Maharashtra** reported in **AIR 1984 SC 1622** has held that

> "In the cases of murder by administration of poison the Court must carefully scan the evidence and determine the four important circumstances which alone can justify a conviction: -
>
> (i) there is a clear motive for an accused to administer poison to the deceased;
>
> (ii) that the accused had the poison in his possession;
>
> (iii) that he had an opportunity to administer the poison to the deceased; and
>
> (iv) that the deceased died of poison said to have been administered."

17. As far as the first point is concerned, while discussing the first circumstance it has been held that the accused persons had definite motive to administer poison to the deceased persons, as the deceased persons were objecting the relations between the accused persons. They were also objecting the visit of Shyam Prasad to Budhwaria Bai's house.

18. As far as the second point is concerned, Parmanand (PW-4) has stated in his evidence that accused Shyam Prasad along with accused Budhwaria Bai came and demanded herb saying that the children are harassing them, they want to keep them under control by

administering herb, therefore, he gave the root of yellow oleander to Shyam Prasad and at that time, Budhwaria Bai was with Shyam Prasad. He gave three pieces of the root of yellow oleander to Budhwaria Bai and asked her that the said substance can be administered to the children by mixing the same in food. He has further stated that the Police came to him during investigation and he gave a piece of the root of yellow oleander to the Police, same was seized under Ex.P-1. In cross-examination, this witness has stated that Budhwaria Bai disclosed to him that her sons are quarrelling with her, therefore, she be given some medicine in order to control them and therefore, he gave the root of yellow oleander to Budhwaria Bai.

19. S.S. Rajput (PW-13) - Sub Inspector, has stated in his evidence that on 4-3-1998 he seized the root of yellow oleander under Ex.P-1 on being given by Parmanand, which bears his signature. Teejram (PW-1) has also stated in his evidence that in his presence the Police seized the root of yellow oleander from Parmanand under Ex.P-1.

20. Ashok Pandey (PW-9) has stated in his evidence that in his presence from the place of occurrence, the courtyard, and in the presence of Anita Bai, the soil containing vomiting substance was seized by the Police under Ex.P-18 and the vomiting substance of Itwari was seized under Ex.P-19. Vegetable of potato and Jhurga were also seized along with utensil under Ex.P-10. This fact has been corroborated by Anita Bai (PW-5).

21. S.S. Rajput (PW-13) has stated that the seized articles were sent to Forensic Science Laboratory, Sagar for chemical examination under Ex.P-26 and the report Exs.P-27 & P-28 were received. Perusal of the report Ex.P-28 reveals that vomiting substance of deceased Santram Ex.'A', vomiting substance of deceased Itwari Ex.'C', vegetables Ex.'E', root of yellow oleander Ex.'G', viscera of Santram Exs.'I' & 'J' and viscera of Itwari Exs.'M' & 'N', after chemical examination, were found containing yellow oleander. Therefore, from the above evidence it is established that the accused persons namely, Budhwaria Bai & Shyam Prasad were in possession of the root of yellow oleander i.e. the poisonous substance.

22. Modi's Medical Jurisprudence and Toxicology defines 'yellow oleander'.

- It is a plant belonging to Apocynaceae, and is widely cultivated as an ornamental shrub in gardens in the plains in India. It has linear lanceolate leaves, large, yellow bell-shaped flowers and a green, globular fruit containing a single nut, light brown in colour and triangular in shape with two cells, each enclosing a pale yellow seed. **The plant is highly poisonous**. Eight milligrams injected into a dog weighing about three

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kilograms produces frothing at the mouth, retching with vomiting and collapse, and causes death within an hour.

- Symptoms: - Burning pain in the mouth and dryness of the throat, tingling and numbness of the tongue, vomiting and often diarrhoea, headache, dizziness, dilated pupils, loss of muscular power, and fainting. The pulse is soft and slow which later becomes rapid, weak and irregular. Varying degrees of heart block and collapse set in, and death occurs from peripheral circulatory failure. Tetanic convulsions are sometimes observed.

- Fatal Dose: - The fatal dose is not certain. One seed killed a child, about four years old. Eight to ten seeds would prove fatal to an adult.

- Fatal Period: - Fatal period is not certain. A young man died in two or three hours after he took his meal mixed with the powdered root.

- Post-mortem Appearance: Generalised haemorrhages and signs of gastrointestinal irritation have been found.

> In the case of a Hindu male, who died shortly after taking some yellow oleander, the mucous coat of the stomach was thrown into exaggerated folds, the general surface of which was congested, and of a deep red colour; scattered about the folds, were some inflammatory spots of a lighter colour than the general surface, somewhat glistening and stellate in appearance, several irregular fragments like millet seeds were found scattered in the mucous folds of the stomach, which on analysis were found to be those of yellow oleander. The duodenum to the extent of four inches was brick-red in colour and had an irregular purple patch in the centre. The liver was congested.

23. Therefore, as per Modi's Medical Jurisprudence and Toxicology, powder of the root of yellow oleander is fatal and if it is mixed in meal, it can cause death. As per the evidence of Parmanand (PW-4), he gave the root of yellow oleander to the accused persons. Accused Shyam Prasad after crushing the root, made powder of the same which was given to Budhwaria Bai, who ultimately mixed the same in the vegetable served with the meals to Santram & Itwari. In the circumstances, for the foregoing reasons, it is established that the accused persons were in possession of the poison i.e. the root of yellow oleander.

24. As far as the third point is concerned, Anita Bai (PW-5) - wife of Sukhram, has stated in her evidence that on the day of incident, she was at her residence, at about 12 noon, Budhwaria Bai cooked meal for all persons, her husband Sukhram was at Bilaspur,

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whereas, Santram & Itwari had gone for their work. Budhwaria Bai first served vegetable of potato & Jhurga. Itwari ate the vegetable, half an hour thereafter, Santram came and Budhwaria Bai served the same vegetable in the same utensil to Santram, he also ate that vegetable. Thereafter, Itwari started vomiting and Santram also started vomiting. They lie down on the cot. She (PW-5) called the doctor. The doctor advised to take them to the Kota hospital. Budhwaria Bai cleaned the vomiting substance of Santram & Itwari, however the second vomiting substance of Santram & Itwari was covered by Kotwarin of the village. Thereafter, Santram & Itwari were taken to Kota for admitting them in the hospital, where they died. She informed her husband Sukhram and he also came. Remaining vegetable, which was in the utensil, was seized by the Police. The second vomiting substance was also seized by the Police. In cross-examination, she has stated that it is incorrect to say that Budhwaria Bai had not served meals to Santram & Itwari. The Police people collected the vomiting substance of Santram & Itwari from the earth after scratching the earth.

25. Anita Bai (PW-5), who is family member of the deceased persons & accused Budhwaria Bai, has stated in her evidence that accused Budhwaria Bai cooked meals, she cooked vegetable of potato & Jhurga and same was served by her to Santram & Itwari. Perusal of the F.S.L. report Ex.P-28 reveals that the test of vomiting substance of the deceased persons as well as of the vegetable, was positive for yellow oleander. Therefore, it is established that the accused persons had opportunity to administer poison to the deceased persons.

26. As far as the fourth point is concerned, it has been established that accused/ appellants Shyam Prasad & Budhwaria Bai procured the root of yellow oleander from Parmanand (PW-4), same was crushed by Shyam Prasad on a stone which was recovered at the instance of Shyam Prasad by the Investigating Officer, after crushing the said root, the powder was given to Budhwaria Bai and she mixed the same in the vegetable which was served with meals to deceased Santram & Itwari by Budhwaria Bai.

27. As per the evidence of Anita Bai (PW-5), Santram & Itwari, after eating their meals, started vomiting and lie down on the cot, thereafter, she called the doctor who advised to take them to Kota hospital, they were taken to Kota and ultimately they died in Kota hospital on account of consumption of poison. Vomiting substance as well as remaining vegetable was seized by the Police from the house of accused Budhwaria Bai and as per the evidence of S.S. Rajput (PW-13) - Investigating Officer, same was sent for

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chemical examination under Ex.P-26 and the report of F.S.L. Exs.P-27 & P-28 were received. As per the report Ex.P-28, pieces of root of yellow oleander as also viscera of Santram & Itwari preserved by the doctor were examined by the F.S.L. and all these items were found containing the yellow oleander. Vomiting substance of the deceased persons collected by the Investigating Officer was also found containing yellow oleander, as per the F.S.L. report Ex.P-28.

28. As per Modi's Medical Jurisprudence and Toxicology, powder of the root of yellow oleander is a poisonous substance and if same is administered to a person then, it can cause death. Moreover, inquest reports of Santram & Itwari show that right eye was coming out, blood was oozing out of that eye, there was a froth mixed with in nose & mouth, the nails became bluish and even the skin of chest and neck also became bluish.

29. The above symptoms are suggestive that the root of yellow oleander, which was administered to the deceased persons, was poisonous and on account of that, other symptoms developed in the bodies of Santram & Itwari. Post-mortem reports of Santram & Itwari also show the above symptoms and the doctor has stated that the death of Santram & Itwari was on account of asphyxia.

30. Dr. Satish Kumar Shrivastava (PW-14) has stated in his evidence that he conducted post-mortem of Itwari, there was blood-containing froth in the nozzles & mouth, tongue was protruding and lungs were congested. He has further stated that viscera were preserved for chemical examination and the death was on account of asphyxia. Similar is the evidence of Dr. A.K. Jha (PW-15) regarding post-mortem of Santram. In para 5 of his evidence, he has stated that on account of consumption of poisonous substance, death can be caused by asphyxia and it is also possible that on account of consumption of poison, froth mixed with blood is found in the nozzles & mouth.

31. Therefore, from the above facts, it is established that the death of Santram & Itwari was as a result of administration of poisonous substance i.e. the root of yellow oleander.

Third circumstance: -

32. As far as the third circumstance as to whether accused Budhwaria Bai & Shyam Prasad made extra judicial confession before Aaju Singh (PW-8) & Janu Singh (PW-10) is concerned, in order to base conviction on extra judicial confession, it must be established that the extra judicial confession is voluntary, prompt and true.

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33. Aaju Singh (PW-8) has stated in his evidence that when he was sitting along with other persons in Kota hospital, accused Budhwaria Bai disclosed that she cooked vegetable of potato & Jhurga and both her sons have died on account of eating the said vegetable. She further said that she mixed poison in the vegetable and served the same to Santram & Itwari, and thereafter, she started weeping. In para 4, this witness has further stated that after the death of Santram & Itwari, accused Shyam Prasad also came to the hospital and on enquiry, he said that he gave two pouches containing poison to Budhwaria Bai for mixing the same in the vegetable for giving to Santram & Itwari for consumption. Shyam Prasad further said that he crushed the root of yellow oleander on a stone. In cross-examination, this witness has stated that the above extra judicial confession was given by Budhwaria Bai & Shyam Prasad at about 7.30 a.m. in front of the Panchas.

34. Janu Singh (PW-10) has also stated in his evidence that he along with Aaju Singh and others were sitting in the hospital, they enquired from Budhwaria Bai, while weeping she disclosed that since last three years, she & Shyam Prasad were having illicit relations, Santram & Itwari were objecting the same, therefore, she along with Shyam Prasad decided to control these two sons. Therefore, they brought the root of yellow oleander, thereafter, that was given to Shyam Prasad who gave it to her after crushing the same into powder, she mixed it in the vegetable and same was provided to Itwari & Santram. This witness has further stated that when Itwari & Santram were vomiting Budhwaria Bai started raising cries, he reached on the spot and saw that Santram & Itwari were vomiting, they took them to the hospital and there they died.

35. In cross-examination of these witnesses (PW-8 & PW-10), defence has not been able to elicit any circumstance, which discredits the evidence of these witnesses. Moreover, they are independent witnesses of the same village before whom the accused persons made extra judicial confession regarding their involvement in the crime in question. The extra judicial confession is corroborated by the other circumstantial evidence that has been discussed in earlier part of the judgment that is accused/appellants Shyam Prasad & Budhwaria Bai were having illicit relations which was objected by the deceased persons & Sukhram (PW-6). A Panchayat was convened in which Budhwaria Bai was advised to start residing at Bilaspur with Sukhram, which was not accepted by her. Thereafter, Shyam Prasad & Budhwaria Bai went to Parmanand (PW-4), procured the root of yellow oleander from him, same was crushed by Shyam Prasad and given to Budhwaria Bai, she mixed that powder in the vegetable cooked by her, she served it to

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Santram & Itwari and on consumption of the same, the two deceased persons started vomiting and ultimately, they died in the hospital. Therefore, for the foregoing reasons, we are of the considered opinion that the accused/appellants made extra judicial confession regarding their involvement in the crime in question, which inspires full confidence of the Court.

36. As far as the argument advanced by Mr. Abhay Tiwari that the accused persons had no intention to cause the death of Santram & Itwari, we are not convinced by the argument of learned counsel for the appellants for the reason that the deceased persons were objecting the illicit relationship of Budhwaria Bai with Shyam Prasad, that is why the appellants planned to administer poison to the deceased persons, the appellants contacted Parmanand (PW-4) from whom they procured the root of yellow oleander, after consumption of the same, the deceased persons started vomiting and the dose of poison was so strong that within no time, Santram died immediately whereas, Itwari died in the hospital. As per Modi's Medical Jurisprudence and Toxicology, which has been discussed earlier, on account of consumption of the powder of the root of yellow oleander, a young man died in 2 to 3 hours after taking his meal mixed with the powdered root.

37. Therefore, there was motive to eliminate Santram & Itwari and there was motive behind causing their death, that is why the accused persons planned to administer the poisonous root of yellow oleander and in furtherance of that, they procured the same from Parmanand, same was crushed by accused Shyam Prasad and given to accused Budhwaria Bai for administering it to Santram & Itwari after mixing it in the vegetable. In the circumstances, intention of the accused persons was writ large to cause the death of Santram & Itwari.

38. In the result, we do not find any illegality or infirmity in the judgment of the trial Court. The appeals being devoid of merit are liable to be dismissed and they are hereby dismissed.

Sd/-
L.C.BHADOO
Judge

Sd/-
Dhirendra Mishra
Judge

Soni